

MEMORANDUM

DATE: October 30, 2007

TO: Ms. Sharon L. Summers, DMMA
Planning & Policy Development Unit
Division of Medicaid and Medical Assistance

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 11 DE Reg. 427 [Nursing Home Reimbursement Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) proposal to amend its Medicaid State Plan in the context of long-term care facility reimbursement. The proposed regulation was published as 11 DE Reg. 427 in the October 1, 2007 issue of the Register of Regulations. SCPD has the following observations.

First, the Division establishes its discretionary authority for creating rates for public facilities. The regulation provides DMMA with the option of either: 1) including public facilities with private facilities when compiling cost information to arrive at a base rate; or 2) simply using public facility costs to arrive to at a base rate. At 428-429. This discretion would ostensibly benefit the State which could then adopt the approach most financially beneficial to public facilities. SCPD endorses this discretion.

Second, the DMMA Director is granted the authority to waive State Plan reimbursement limits "if a circumstance exists that could negatively affect the health, safety and welfare of residents in Delaware if the provision is not waived." At page 439. This concept is similar to one endorsed by the Council authorizing the State to provide additional reimbursement to pediatric nursing homes to assure that a child's health status is not jeopardized." See commentary at 11 DE Reg. 314 (September 1, 2007). My only concern with the proposed language is that it is literally limited to "residents in Delaware". Sections VII (p. 441) and IX (p. 442) contemplate reimbursement to out-of-state facilities (e.g. Vorhees). To ensure that the DMMA Director's authority to waive standards could extend to out-of-state facilities, it would be preferable to substitute "facility residents" for "residents in Delaware". This would achieve consistency with Section IX which grants DMMA the option of providing additional reimbursement to both in-state and out-of-state facilities.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: Mr. Harry Hill
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

P&I/10reg427 dmma-nh reimburse 10-07